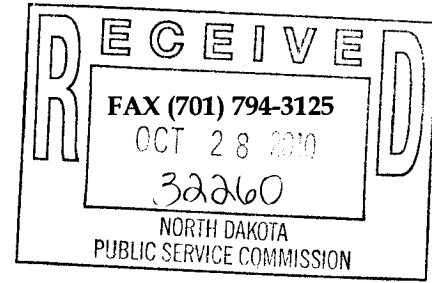


PHONE (701) 794-8734



October 28, 2010

Mr. James R. Deutsch, Director  
Reclamation Division, NDPSC  
Department 408  
600 East Boulevard Avenue  
Bismarck, ND 58505-0480

RE: Revision 30 to BNCR-9702

Dear Mr. Deutsch,

This submittal contains a response to your letter to us dated September 1, 2010. In this letter you listed technical deficiencies that must be addressed before the revision can be deemed complete. The following is a listing of the deficiencies followed by our response:

**General**

1. A scale value, typically 1:400, is listed in the title block on a number of plates; however, the map print size must also be provided for the numeric scale that is listed. The following Plates were noted as having a numeric scale value listed with no page print size: 3.5-1A, 3.5-1B, 3.5-1C, 3.5-1D, 3.6-1, 4.10-3, 4.10-4, 4.10-5, and 4.10-9. Please review all of the plates, figures and maps included within this application and update them to meet the requirements of NDAC 69-05.2-09-02(1). (GAW)

*All the maps within the permit were checked to make sure that they print at their intended scale. The above referenced plates were updated to print at the correct size and scale.*

**Revision 30 List of Changes**

2. As part of BNI's conversion from a paper to an electronic permit for BNCR-9702, it will be necessary to maintain the revision List of Changes permanently within the electronic permit. This process is accomplished by other mines by simply listing Revision Changes following the Revision Summary. The temporary hyperlink to the Revision 30 List of Changes on the permit's homepage was adequate for the completeness review, but the List of Changes must be incorporated into the Revision Summary for both Revisions 30 and 31 prior to revision approval. The List of Changes must also be updated as necessary during the Revision 30 technical review. (WTG)

*The List of Changes for Revision 30 has been added to the Revision Summary. Revision 31 List of Changes was not added since this revision was a paper revision and was approved prior to Revision 30 being approved.*

3. Please correct the Ownership Map description in the List of Changes (should be Plate 1-2 rather than Plate 1.2-1). (WTG & MSK)

**BNI COAL, LTD.**  
**2360 35<sup>th</sup> Ave SW, Center, ND 58530**

FROM DIRECTOR - RECLAMATION DIV.

Date: \_\_\_\_\_

Action: \_\_\_\_\_

Info. Only: \_\_\_\_\_

Info & File: \_\_\_\_\_

*Updated as requested.*

### **Section 1.8 – Description of the Permit Boundary**

4. Please provide the NAD 27 survey coordinates of the point of beginning for all surveyed parcels in the Metes and Bounds description. (MSK)

*The NAD 27 coordinates have been added to the metes and bounds.*

### **Section 1.9 – Surface and Coal Ownership**

5. For the coal ownership in the SE $\frac{1}{4}$  of Section 20, BNI Coal is not listed as a coal owner in Table 1.9-1, but is listed on the Ownership Map. Please correct as necessary. (SAS)

*Table 1.9-1 was updated to add BNI Coal as a coal owner.*

6. Please provide the coal leases for that portion of the coal in the SE $\frac{1}{4}$ , S $\frac{1}{2}$ SW $\frac{1}{4}$ , NE $\frac{1}{4}$ SW $\frac{1}{4}$ , and SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 32 that is owned by Hancock Enterprises (3.125%) and Fortin Enterprises (3.125%). Leases for these coal ownerships could not be found in Revision 30 or the currently approved permit. (DKM)

*The leases for these two coal owners are already located in the permit. The title sheets for Section 32 SE $\frac{1}{4}$ NW $\frac{1}{4}$  and S $\frac{1}{2}$ SW $\frac{1}{4}$ , page 32-79 and 32-84, state that the Hancock Enterprises and Fortin Enterprises lease documents are located on pages 5-55 & 56 and 5-57 & 58, within the Section 5 lease documents.*

7. For the balance of Section 10 where the USA is not the coal owner, Table 1.9-1 lists Walter Reinke as the coal owner, but the Ownership Map lists Walter and Beatrice Reinke as the owners. Please review and correct as necessary. NDCC 38-14.1-14(1)(b) and NDAC 69-05.2-06-01(1)(a). (SAS)

*The Ownership Map was updated as requested.*

8. Landowner notification letters were sent to the John P. Yantzer Estate, but the surface owner listing in this section in Table 1.9-1 and the Ownership Map still list the surface owner as John P. Yantzer. Please correct as necessary. (SAS)

*Table 1.9-1 and the Ownership Map have been updated as requested.*

9. Please explain the meaning of “Undetermined” as listed under the coal ownerships for the SE $\frac{1}{4}$  of Section 30 on Plate 1-2, Ownership Map. Please explain this term in Section 1-9 and the steps BNI took to determine all coal owners for this tract. (SAS)

*On previous versions of the Ownership Map, the section 30 coal ownerships were not required to be listed since they were not within a  $\frac{1}{4}$  mile of the permit boundary. With the acres proposed to be added with Revision 30, the SE  $\frac{1}{4}$  of Section 30 falls within that  $\frac{1}{4}$  mile and the coal owners have been listed in Table 1.9-1 and on the Ownership Map.*

### **Section 1.10 – Areas Unsuitable for Mining**

10. The second paragraph of Section 1.10 states that three historical sites that may be eligible for registration are shown on Plate 4.1-1 that has been revised with Revision 30. These features cannot be found on the plate. Please either show them on the plate or revise the statement if

the sites have been determined ineligible for registration. We also recommend that the word “registration” be changed to “listing.” (GAW & SAS)

*The second paragraph of section 1.10 was revised accordingly.*

### **Plate 2-1 – Extended Mine Plan**

11. The Extended Mine Plan Map submitted to the Reclamation Division in January 2010 does not correspond with the Revision 30 Extended Mine Plan Map, Plate 2.1, particularly with regard to the years of mining for Sections 21 (permit shows mining in 2013), 28, and 33 (years and mining pits). Please indicate which is the current Extended Mine Plan Map and if the January 2010 submittal is the current one, please update the revision application accordingly. (SAS)

*The revision 30 map is the correct map and has been revised to reflect our latest mine plan and is attached to this submittal.*

### **Section 3.2 – Geology**

12. The main links to Plates 3.2-4 and 3.2-5 do not work when viewing the permit using either Internet Explorer or Google Chrome web browsers. The maps can be opened in earlier versions of the revision application, but not in the most recent June 24<sup>th</sup> completeness response. Please repair the links to these two maps so that they can be opened and viewed. (BEB)

*Updated as requested.*

13. BNI Coal’s April 21, 2010, response to the Reclamation Division’s February 10, 2010, completeness deficiency letter stated in response to deficiency No. 18 that additional drillhole data would be provided for areas in the NW¼ of Section 32. This data was requested for compliance with the 1 drillhole per 40-acre requirement. Approximately four months have passed since the completeness response was received and we presume the drillhole data has been collected and analyzed and we ask that you please incorporate the additional drillhole information into all relevant sections of the permit, including the Drill Hole Location Map, Plate 3.2-1. (BEB)

*Per phone conversation on 9-16-2010, these 4 compliances will be drilled this season, with analytical data being sent in as it arrives.*

14. Although not required, please consider incorporating bookmarks of the individual drillholes, or even bookmarks of the year/series datasets into the listings of geophysical and lithologic logs in Appendix 3.2-1 and into the listings of chemical and physical analyses of overburden in Appendix 3.2-2. Several of the dataset series and individual drillholes within the sections are not in chronological order and the ability to click on a bookmark to take the reader directly to the information provided for individual drillholes or series of drillholes would be beneficial to BNI Coal and to other permit reviewers, as well. Similar bookmarks have been incorporated into other sections of the permit with good results. (BEB)

*Given the extent of information in this section, the bookmarks will be added as time allows.*

### **Section 3.3 – Ground Water**

15. Please rearrange this section to place the Table of Contents at the beginning, rather than the end or delete the “Table of Contents” altogether since the same information is provided in the bookmarks. (WTG)

*The table of contents was removed, due to bookmarks.*

16. Similar to the previous request dealing with bookmarks in the Geology section of the permit, please consider adding bookmarks to the Monitoring Well Completion Reports in Appendix 3.3-3. The nearly 160 pages of lithologic logs, geophysical logs, well driller’s reports and hand-written drilling logs that are incorporated into this particular section makes it extremely difficult and time-consuming to find information for a particular well in the current format. Please consider adding bookmarks to this particular ground water appendix. (BEB)

*Given the extent of information in this section, the bookmarks will be added as time allows.*

17. There are two monitoring wells located next to each other and are located approximately one-quarter mile directly south of monitoring well 367. The well numbers overlap each other and cannot be distinguished on the map. In viewing this map in previous versions, it appears the wells are BNI 335 and BNI 368. Please separate the well numbers on the map so that they can be easily distinguished. (BEB)

*The plate was updated with the separation of well numbers as suggested.*

18. Please update Plate 3.3-5, Water Well Location Map, to depict the entire permit boundary including the area being added with Revision 30 as one boundary. Currently, the existing and additional area boundaries are depicted separately. Also, please strengthen the permit boundary line to improve its legibility and add Revision 30 to the title box. (WTG)

*Plate 3.3-5 was updated with new permit boundary.*

### **Section 3.4 – Surface Water**

19. Please rearrange this section to place the Table of Contents at the beginning, rather than the end or delete the Table of Contents since the same information is provided in the bookmarks. (WTG)

*The table of contents was removed, due to bookmarks.*

20. Narrative in the first paragraph of Section 3.4.1, Area Surface Water Resources, describes the presence of Square Butte Creek and Hagel Creek in relation to the permit area. The narrative also describes the presence of SCS Dam 4 as being located in the Square Butte Creek Watershed and this statement should be revised to place the dam in the Hagel Creek Watershed. Please revise the narrative. (BEB)

*The section was updated with corrected stream identification.*

21. Please revise Section 3.4 to organize access of Appendix 3.4-3a to be consistent with other appendices within the permit. The permit Table of Contents lists Appendix 3.4-3a as a stand-alone file, but the Section 3.4 Table of Contents lists it as a section, and it is attached to the Section 3.4 narrative as an appendix. Please separate the appendix from the narrative, create

a hyperlink to it on the Volume V home page, correct the Section 3.4 Table of Contents to list it as an appendix, and correct the revision's List of Changes. (WTG)

*Appendix 3.4-3a has been revised to be a standalone appendix.*

22. Please revise the pages in Appendices 3.4-1 (page 33) and 3.4-2 (page 34) that denote updated surface water data. Rather than being titled as Appendix 3.4-1 and Appendix 3.4-2, the title should indicate that what follows is updated surface water data for the years 2007-2009. Please also correct the revision's List of Changes because new appendices cannot be added to existing appendices. (WTG)

*Both appendices were updated to show "Updated SW data"*

23. Please label the watershed boundary for some of the acreage added in Sections 21 and 29 with Revision 30 in the upper left corner of Plate 3.4-1, General Drainage Map. The North Dakota Watershed Boundary Dataset defines this approximate watershed as "Headwaters Square Butte Creek". (WTG)

*The watershed boundary was updated to include the proposed additional permit area.*

24. Please provide a white background for the legend on Plate 3.4-2, Pre-Mine Watersheds, as the legend is hard to read against the topographic background. (MSK)

*The background was adjusted.*

25. Please identify and define the watershed for the area in the northwest corner of the SW¼ of Section 29 on Plate 3.4-2, Pre-Mine Watersheds. The watershed for a portion of the acreage being added in Section 29 is not identified. (MSK)

*Plate 3.4-2 was updated to include the additional area in Section 29.*

26. Please identify Square Butte and Hagel Creeks on Plate 3.4-2, Pre-Mine Watersheds, and Plate 3.4-3, Post-Mine Watersheds. (MSK)

*Updated.*

### **Section 3.5 – Pre-Mine Land Use**

27. A sentence in the fourth paragraph on page 3.5-3 states that a second group of tables were added for the Revision 30 addition area including Tables 3.5-6a and 3.5-7a, but it does not appear these new tables were added. Instead, it appears the existing tables 3.5-6 and 3.5-7 were updated to include the Revision 30 acreage. Please review and update as appropriate. (GAW)

*The narrative in the fourth paragraph on page 3.5-3 was updated. Two tables were added as listed (3.5-2a and 3.5-3a) while tables 3.5-6 and 3.5-7 were revised.*

28. Please label the acreage for the portion of the temporary wetland located in the northeast corner of the SW¼ of Section 29 (0.79 acres) as has been done for the balance of the land uses on the Pre-Mine Land Use Map, Plate 3.5-1D. (GAW)

*The requested acreage of the temporary wetland was labeled on the map.*

### **Section 3.6 – Pre-Mine Vegetation**

29. Please update Table 3.6-1, Comprehensive Plant Species List for BNCR-9702, to include the Revision 30 area. The language added at the end of the second paragraph on page 3.6-1 states that Table 3.6-1 was not updated to include the Revision 30 acreage but this is confusing given the name of the table and location of the table (Section 3.6 Pre-Mine Vegetation). This Comprehensive Plant Species List should include the entire permit area. (GAW)

*Table 3.6-1 was updated to include a complete plant species list for BNCR-9702 which includes the Rev. No. 30 Species List that was previously illustrated in Appendix 3.6-1a.*

30. The plant species list in subsection 7 of Appendix 3.6-1a includes a number of species associated with wetlands but wetland is not listed as a land use within the study area, according to notations at the bottom of the list. Subsection 6 contains the seasonal wetland species list. Please include a discussion in Subsection 7 explaining why wetlands species are being associated with the native grassland rather than wetlands. It seems inconsistent to classify temporary wetlands as wetland acreage in Table 3.5-1, Pre-Mine Land Use Acres, yet consider temporary wetlands as native grassland in the plant species list. Please review and update to clarify this issue. (GAW)

*As discussed with PSC staff the comprehensive species list (Table 3.6-1) was updated to reflect the wetland species present.*

31. Follow-up to completeness item no. 34: Please include a discussion in the permit that describes the process used to identify and classify the wetlands and the consultation with NRCS during the inventory process. (GAW)

*Revised section 3.6-2 as requested.*

32. Page one of the narrative references Figure 3.6-1 that is only accessible through a hyperlink in the narrative or indirectly through Windows Explorer. The use of this image as a “figure” is different from the naming convention used for all other images in the permit titled as plates (except for two images in Section 3.8 - see related deficiency). This difference was not a concern when the permit was in paper format, but in electronic format all separate files and images in the permit must be accessible by hyperlinks on the volume home page, as well as a narrative hyperlink if they are referenced in the narrative. Please incorporate Figure 3.6-1 into the Section 3.6 narrative or as an alternative, re-title the image as a plate, create a hyperlink for it on the Volume V home page, add it to the list of plates for Volume V in the permit’s Table of Contents, and update the permit’s List of Changes. (GAW)

*Figure 3.6-1 has been revised to be a standalone file.*

33. Appendices 3.6-1 and 3.6-1a are listed separately in the permit’s Table of Contents and are referenced as separate documents in the narrative on page one, but the hyperlinks to both open the same file. Please separate these appendices at the end of page 164 and create hyperlinks for both appendices on the home page of Volume V. Please also separate Appendix 3.6-1b at page 200 and create a separate hyperlink on the home page of Volume V to it as well, although it does not appear to be referenced in Section 3.6. (WTG)

*Appendices 3.6-1a and 3.6-1b were both revised to be standalone appendices within the permit.*

34. Since it is not on a section line, please remove the extraneous yellow line through the N½ of Sections 28 and 29 on Plate 3.6-1 Ecological Site Types. (MSK)

*As discussed with PSC staff the comprehensive species list (Table 3.6-1) was updated to reflect the wetland species present.*

### **Section 3.7 – Prime Farmlands**

35. Plate 3.7-1, Exempt Prime Farmland, states that prime farmland standards apply to 127.4 acres. However, the text on page 3.7-2 and the table on page 3.7-3 both list 145.8 acres. Please correct the acreage value on this plate and depict the additional areas where standards apply if not already indicated. (SAS)

*Following revising upcoming deficiencies there are 164.04 acres of prime farmlands that standards do apply, this was updated on plate 3.7-1 as well as within the text on 3.7-2 and table on page 3.7-3.*

36. Please change the plate title to Prime Farmland because the plate depicts prime farmland that is exempt from the performance standards, as well as prime farmland that is subject to the performance standards. (WTG)

*The title was changed to Prime Farmland.*

37. We recommend including language in Section 3.7 indicating that in some instances, the actual prime farmland salvage areas have differed from the delineated prime farmland areas (e.g., the prime farmland salvage area in the NE¼ of Section 32 that was modified as approved by the Commission on August 6, 2010). Please indicate that in those instances where modifications are made prime soils map unit location, Commission approval is needed. (WTG)

*Page 3.7-4 was revised to reflect the suggested language.*

38. Please strengthen the permit boundary on Plate 3.7-1, Exempt Prime Farmland, to make it more visible and add a revision number to the title box. We also recommend eliminating the magenta line that represents additional acres being added to the permit (does not represent the area being added with Revision 30 but actually represents the area added to the permit with an earlier revision). (WTG & MSK)

*The permit boundary line was enlarged and darkened, revision no. 30 was added to the title block, and the magenta line representing additional acres was on plate 3.7-1.*

39. On Plate 3.7-1, the area of prime farmland in the northwest corner of Section 21 is shown as being exempt (blue hatched) from the prime farmland standards due to land use. This area is currently in CRP (not native grass) and traditionally we have considered CRP to be cropland (see prime farmland areas in the SW¼ of Section 21). Please make the necessary corrections including the acreage totals. (DKM)

*Plate 3.7-1 was revised accordingly as well as the text in section 3.7-1 which reflects the appropriate acreages.*

40. On Plate 3.7-1, the SE¼ of Section 29 and the NE¼ of Section 32 are depicted as being exempt from the prime farmland standards because these tracts were leased prior to August 3, 1977. Originally these tracts were leased in 1971 with a 35-year lease term. This original lease was allowed to expire and new leases were obtained from the heirs. Therefore, it

appears that BNI had given up the right to mine these tracts when the lease was allowed to expire and new leases were secured. It appears that the E½NE¼ of Section 32 was “grandfathered” when it was originally permitted; however, it now appears that it can no longer be “grandfathered” because the original right to mine was allowed to expire. Therefore, the prime farmland in this tract will have to be shown as subject to the prime farmland standards. In addition, 50% of the coal for the SE¼ of Section 29 is unleased state coal, thus also making it subject to the prime farmland standards. Please make the necessary corrections including the appropriate updates to acreage totals. (DKM)

*Revised as requested with the exception of one piece located in the NE4 of section 32-142-84. This parcel has had a continuous lease since 1971 which included at minimum 92% of the coal leased.*

### **Section 3.8 – Soil Resources**

41. The narrative references Figures 3.8-1 and 3.8-2 that are only accessible through a hyperlink in the narrative or indirectly through Windows Explorer. The title of these images as figures is different from all other images in the permit titled as plates (except for one image in Section 3.6 - see related deficiency). This difference was not a concern when the permit was in paper format, but in electronic format all separate files and images in the permit must be accessible by hyperlinks on the volume home page, as well as a narrative hyperlink if they are referenced in the narrative. Please incorporate Figures 3.8-1 and 3.8-2 into the Section 3.8 narrative or as an alternative, re-title the images as plates, create hyperlinks for them on the Volume VI home page, add them to the list of plates for Volume VI in the permit’s Table of Contents, and update the permit’s List of Changes. (WTG)

*Figures 3.8-1 and 3.8-2 have been revised to be standalone documents in the permit.*

42. Please add map unit 18C Daglum 6-9% to the map unit legend for Prairie Soil Consulting on Plate 3.8-1F. While making this change, please also add a revision number to the title box. (WTG)

*Map unit 18C Daglum 6-9% was added to the map unit legend as requested.*

### **Section 3.10 – Fish and Wildlife Resources**

43. The new wording on page 3.10-1 that states no high value fish and wildlife habitat was found to exist in the additional 676.5 acre area being added with Revision 30. NDAC 69-05.2-08-15(3)(b) specifically identifies wetlands as a possible high value habitat for fish and wildlife. Please provide justification in the permit as to how this statement is correct given that class II and III wetlands exist on this addition area and the regulations specifically state that wetlands are high value fish and wildlife habitat. (GAW)

*The second paragraph of page 3.10-1 was revised to list the 2.31 acres of seasonal wetlands and 0.791 acres of temporary wetlands as high value fish and wildlife habitat.*

44. In the Threatened, Endangered and Candidate Species narrative in Appendix 3.10-1a, please discuss if the seasonal wetland being added with Revision 30 could be considered suitable habitat for migratory whooping cranes. (GAW)

*In Appendix 3.10-1a, the Threatened, Endangered, and Candidate Species narrative was revised to discuss the seasonal wetland value to migratory whooping cranes.*

### **Section 3.12 – Cultural and Historic Resources**

45. Please reposition the hyperlinks to the cultural and historic resource studies dated 1976 through 1984b on the Volume VII home page to place them below the text line for Appendix 3.12-1. (WTG)

*Although we appreciate the comments on visual appearance of our permits we would recommend a phone call or email pointing out small inconsistencies such as an extra space being present. However we do not believe items like these are permit deficiencies the item was corrected at this time.*

46. Site 32OL343 is listed as being outside of the permit area on page 3.12-5 (Cultural Resource Table); however, with the area being added to the permit area with Revision 30, this site is now located within the permit area. Please correct this discrepancy. (DKM)

*Site 32OL343 on page 3.12-5 (Cultural Resource Table) was revised now illustrating it is within the permit.*

### **Section 4.1 – Coal Removal**

47. Please rename the hyperlink to Section 4.1 Coal Removal on the Volume X home page to make it consistent with the narrative title (Mining Operations and Waste Disposal). (WTG)

*Updated as requested.*

### **Plate 4.1-1 – Pit Layout and Facilities Map (formerly the 5-Year Limited Mine Plan)**

48. The hyperlink to Plate 4.1-1, Limited Mine Plan, on the Volume X home page opens a plate titled as such, but the hyperlink for this plate in the second paragraph on page 1 of Section 1.10, Areas Unsuitable for Mining, opens the Pit Layout and Facilities Map that is also titled Plate 4.1-1. BNI's April 21, 2010, response to completeness deficiency number 47 stated that Plate 4.1-1 was updated and re-titled as Pit Layout and Facilities Map at the Reclamation Division's request. The Pit Layout and Facilities Map, however, is not listed as a plate on the home page of Volume X, nor on any other home page in the permit, and it does not appear that any other hyperlink in the permit will open it. Please remove the former 5-Year Limited Mine Plan from the permit. Please also review the entire permit for references or hyperlinks to Plate 4.1-1 and make the corrections necessary to ensure that all references to the Limited Mine Plan Map are changed to the Pit Layout and Facilities Map, and that hyperlinks to Plate 4.1-1 are directed to the Pit Layout and Facilities Map. Finally, please update the permit's Table of Contents and the Revision 30 List of Changes to clearly indicate that Plate 4.1-1, 5-Year Limited Mine Plan, was replaced with Plate 4.1-1, Pit Layout and Facilities Map. (GAW)

*Updated as requested.*

49. Please revise Plate 4.1-1 to show all pits up to the mining disturbance boundary in Sections 28 and 32. Also, based on the Extended Mining Plan that shows mining extending into Section 20, please depict all pits up to the west permit boundary in Section 21. NDAC 69-05.2-09-02(4). (JRD)

*The mining disturbance boundary has been revised and follows the pit lines. Pit lines are now shown out to the west permit boundary in Section 21.*

## **Section 4.2 – Existing Structures**

50. The narrative for Section 4.2 states that Plate 4.2-1 General Mine Plan contains topographic information, but no topographic information is depicted on the plate. Please revise as necessary. (WTG)

*The text of Section 4.2 has been revised to describe only the items that are depicted on Plate 4.2-1.*

## **Plate 4.2-1 – General Mine Plan**

51. The label for Permit BNCR-8202 in Section 26 should be moved into that portion of the section that is still permitted. It is currently labeled in the bond released portion of the section. In addition, Permit 37 in Section 23 should be labeled. (SAS)

*These changes have been made to Plate 4.2-1.*

52. Please delineate the outline of sedimentation ponds (embankment and pool areas) and stockpiles in their respective areas, label each stockpile and pond, and update the legend for the ponds. (MSK)

*These changes have been made. Please note that for older sedimentation ponds, the approximate locations of embankments and pool areas were traced from air photos.*

## **Plate 4.5-1 – Permit Boundary and Overall Road Plan**

53. Please update Plate 4.5-1 to depict the haul road extensions approved with Revision 31 and any other haul road updates. (MSK)

*Plate 4.5-1 was updated.*

## **Section 4.6 – Surface Water Management Plan**

54. Please insert a title sheet for Appendix 4.6-1 Sediment Pond and Diversion information. (MSK)

*A title sheet was added for Appendix 4.6-1.*

55. Throughout most of the Section 4.6 narrative, the hyperlinks to designs for ponds and diversions are labeled as Appendix 4.6-1, but in some places (Diversions 28-1 and 28-2) the hyperlink is labeled as the diversion (or pond) number. Regardless of the hyperlink label, Appendix 4.6-1 opens to the first page, or the page most recently opened, where the viewer selects the pond or diversion design from bookmarks. Please label the hyperlinks to the designs as Appendix 4.6-1 throughout the narrative because the hyperlink does not open a specific design in the Appendix. Please also rearrange the bookmarks in Appendix 4.6-1 so that they are grouped by ponds and diversions, and ordered numerically, to more quickly find the design of interest. (MSK)

*All the links to Appendix 4.6-1 within this section appeared to go directly to the pond or diversion that they were intended to go to. The bookmarks have been rearranged as requested.*

56. Please provide the AutoCAD files (in 2009 or earlier format) for Pond 21-4 and Diversion 21-2 with the watersheds delineated so that we can complete the design review. (MSK)

*Active AutoCAD files are not included as part of our permit submittal, but we will provide these files as necessary for your review.*

#### **Section 4.9 Reclamation Schedule**

57. The Reclamation Schedule needs to be updated to extend beyond 2010 and include all areas that will be mined in the permit area. This must include the schedule and any variances that will be needed for final pit areas in the western part of Section 28 and the north end of Section 32. (JRD)

*The reclamation schedule has been updated with a table that depicts the years in which reclamation activities will take place. Two additional Variance Areas have been proposed in Section 21 and 28. They are depicted on Plate 4.9-1 and explained in Section 4.9. At this time, BNI proposes that reclamation of the final pit in Section 32 will be completed within the three year contemporaneous reclamation requirement.*

#### **Plate 4.10-1 – Post-Mining Topographic Contours**

58. Please discuss the assumptions that were used to develop the Post-Mining Topographic Map, especially for the final pit areas in Sections 28 and 32. Also, please provide the supporting calculations that show that the proposed post-mining topography can be achieved. (MSK & JRD)

*We are currently encountering pre-bench material in Section 21 and it will continue throughout the section as we mine west. Pre-bench material will be used to fill any remaining volume in the final pit in Section 28, and the post-mine topo is modified to accommodate this need. The final pit in Section 32 will be reclaimed by using stockpile pre-bench material from within Sections 32 and/or 21. Pre-bench material is encountered throughout the center of Section 32 and increases toward the north. Calculations will be provided for review as needed.*

59. Please update Plate 4.10-1 to depict the revised location of the proposed prime farmland reclamation area in the S½ of Section 32. As discussed in email correspondence relating to Grade Approval 2010\_04, the proposed prime farmland reclamation area will be moved to the west of the grade approval area that is being reclaimed to non-prime cropland post-mine land use. (WTG)

*The prime farmland location was updated on Plates 4.10-1 and 4.10-2.*

60. Please update Plate 4.10-1 for the design of Wetland 5 in Section 32 if necessary. As discussed in email correspondence relating to Grade Approval 2010\_04, Wetland 5 will be moved to the northwest of the grade approval area that is being reclaimed to cropland post-mine land use, and it appears that the wetland will be reshaped. (WTG)

*Wetland 5 was added to Plates 4.10-1 and 4.10-2. Wetland 5 was rotated to fit within the surrounding post-mine topography including some minor reshaping. The section 21 wetland was also added into Plates 4.10-1 and 4.10-2 which also includes some reshaping to fit within the surrounding post-mine topography.*

61. Table 3.7-1 indicates that Schwalbe, et. al. have about 15.6 acres of prime farmland that will be disturbed by mining; however, Plate 4.10-1 does not show any prime farmland being respread on their property. Please make the necessary corrections. (SAS)

*The prime farmland belonging to Schwalbe et. al. was added into Plates 4.10-1 and 4.10-2. The prime farmland acreage shown in the adjusted plates only includes the acreage of prime farmland that is estimated to be disturbed within that ownership. This is also true for the other proposed prime farmland areas shown in the plates.*

62. T & K Lipp have prime farmland that will be or has been disturbed in Sections 5 and 32. Please explain if all the areas are being combined into the proposed respread area are shown on Plate 4.10-1 in Section 32. (SAS)

*Lipp's prime farmland in Sections 5 and 32 has been combined into the proposed area within Section 32 as shown on Plate 4.10-1.*

63. Please explain whose prime farmland was respread in Section 33 as indicated on Plate 4.10-1. Table 3.7-1 does not indicate any acreage and Plate 3.7-1 does not show any areas of prime in that section now owned by BNI. (SAS)

*BNI owns Sections 28, 27, 33, and 34. BNI has prime farmland acreage on Section 28 which was respread on BNI ownership.*

64. Please use a different colored background on Plate 4.10-1 for the area in Permit BNCR-9702 that has already obtained grade approval. (MSK)

*Updated.*

65. In comparison to Plate 3.1-1, Pre-Mining Topographic Contours, please explain what appear to be topographical changes on Plate 4.10-1 that are located outside the mine disturbance and permit boundary. The topography for areas outside of the mine disturbance boundary should not be altered. (MSK)

*These areas were corrected according to the Mining Disturbance Boundary, except on the west end of Section 21 where the current mine plan is to continue mining west into Section 20.*

#### **Plate 4.10-2 – Post-Mining Slope Analysis**

66. Please update Plate 4.10-2 with any changes to the possible prime soil respread area made to Plate 4.10-1. (WTG)

*Updated.*

67. Plates 4.10-1 and Plate 4.10-2 both show that the slopes in the SW¼ of Section 21 will be of a much gentler slope but quite long. We recommend that that slope lengths not exceed 750 feet in length to the extent possible. Multiple secondary drainages are encouraged to limit slope length. Long gentle slopes tend to be very susceptible to erosion. (MSK)

*Some modifications were made to create some secondary drainages within the areas of concern. Also note there were other modifications made to the post-mine topography within Sections 21 and 28 that were updated since the previous submittal.*

#### **Section 4.12 – Post-Mine Land Use and Revegetation**

68. Please update Plate 4.12-1, Post Mining Land Use, to depict the revised location of Wetland 5 in the S½ of Section 32. As discussed in email correspondence relating to Grade Approval

2010\_04, Wetland 5 will be moved to the northwest of the grade approval area that is being reclaimed to cropland post-mine land use. (WTG)

*The revised location of wetland 5 and the wetland in section 21 were updated in the plate.*

69. The recent submittal of BNI Grade Approval Request 2010\_06 in Section 33 of BNCR-9702 indicates a discrepancy in the location of Wetland #2 in Section 33. Plate 4.12.1, Post-Mining Land Use, indicates the location further to the northeast than the location depicted on Plate 4.10.1, Post-Mining Topographic Contours. The current location on Plate 4.12.1 has the wetland within a portion of the requested grade approval area (which is not the case). Please adjust the location of this wetland on Plate 4.12.1. (SAS)

*Updated.*

70. BNI is proposing to convert all of the native grassland that is being added to the permit in Sections 21 and 32 to cropland which is inconsistent with the wishes of the majority of the surface owners who submitted signed landowner preference statements stating that they want the pre-mine land use acreages restored. Please revise all relevant plates, tables and narratives in Volume XI to comply with the majority of the surface owner's requests or explain why the landowner preferences cannot be implemented. (GAW)

*Section 21 will be returned to approximately the same acres as premine conditions. It should be noted that the acres specifically in revision 30 may differ than the pre-mine landuse acres but over the entire section 21 the acres are virtually identical as pre-mine conditions. This is due to the irregular shape pre-mine landuses.*

*Section 32 there are multiple surface owners on multiple tracts. The SE4 and the SE4NW4, E2SW4, and the SW4SW4 are owned by one owner which requests as much cropland to be reclaimed. The N2NW4, SW4NW4, and the NW4SW4 are owned by 8 surface owners with differing percent ownerships. In a case as this with multiple surface owners BNI used the preference of the largest percent ownership that returned the preference statements, hence returned to cropland. Likewise, the NE4 of section 32 is owned by 5 surface owners with varying surface ownerships and again the preference of the largest percent ownership that returned the preference statements were used.*

71. Several totals for the columns in Table 4.12-1 are incorrect while most of the row totals are within  $\pm 0.1$  acre. The total of all acres is listed at 6,767.9 acres when it is actually 7,086.9 acres, approximately 68.37 acres more than what is in the permit after this addition. Please adjust the acreage values in this table accordingly. (SAS)

*Revised table 4.12-1.*

72. BNI is adding 3.2 acres of wetland and 6.4 acres of shelterbelt to the permit in Section 29, most of which is not going to be disturbed by mining activities, yet the total post-mine wetland and shelterbelt acreage listed in Table 4.12-1 is not being increased. Please review and update as necessary. (GAW)

*Revised, an error was found in the formula in the column totals and acres were not added.*

73. Table 4.12-1, Post-Mining Land Use Acres, shows that there will be a reduction of 12.5 acres of native grassland in the previously permitted area in Section 21 and none of the pre-mine native grassland that is being added with Revision 30 is being reclaimed. It is not clear why the amount of native grassland is being reduced in this section with this revision because no

other changes are being proposed according to the Post-Mine Land Use Map. Please review and revise as necessary. (GAW)

*Revised. As illustrated in section 4.12-2, section 21, there is a slight increase in native grassland acres over the entire section 21 land.*

74. Please update Section 4.12-2, Pre- and Post-Mine Land Use Discussions, to discuss replacing the shelterbelt located in the NW¼ of Section 32, and update Section 4.12-3, Reclamation Information, with information pertaining to the species to be planted and the design plans. Although not a part of Revision 30, please also identify the location (section) where the first shelterbelt in the table on page 3 is to be located. (GAW)

*The design plans have not yet been added to the permit. They will be added as more discussion with the landowners comes about. Due to the length of time before this area will be reclaimed, seeded for a couple of years to promote soil stability, then trees planted will allow ample time to incorporate the designs in upcoming revisions.*

75. The new paragraph on page 4.13-2 states that the developed water resource on the land being added with Revision 30 will not be replaced but the Post-Mining Land Use Map, Plate 4.12.1, depicts a DWR in the same general area where it existed pre-mine (between the NW¼ and SW¼ of Section 32). Please review and correct as necessary. (GAW)

*Section 4.13-2 and plate 4.12-1 were revised accordingly, same as technical No. 81.*

76. BNI is proposing to delete historical information from the Section 21 narrative on pages 4.12.2-6 and 7. The discussion about the slopes along the highwall may be removed because mining is going to continue through the tract, but the information about the land use changes that occurred with Revision 22 must be retained. (GAW)

*BNI does not see a need to retain information that may have been at one time proposed but never happened within our mining permit. Retention of this material only leads to confusion and congestion. No changes made.*

77. The Section 29 discussion on page 4.12.2, Pre- and Post-Mine Land Use Discussions, states that no disturbances will occur on the shelterbelts in Section 29 and that all disturbances will be reclaimed to cropland. However, the Pit Layout and Facilities Map, Plate 4.1-1, shows that shelterbelts and field windbreaks will be affected by the highwall backfill area. Please review and correct as necessary. (GAW)

*Plate 4.1-1 (Pit Layout and Facilities Map), previously did not show the disturbance boundary overlapping the existing east west multi-row shelterbelt in the SW4 or the single row belt in the W2W2. It did however show approximately 0.1 acre of the single row belt being disturbed in the planting between the W2 and E2 of the SW4. As indicated in 4.12.2 (pre-post mine land use discussions) it is still our intent not to disturb the shelterbelts, hence plate 4.1-1 was modified to eliminate the 0.1 acre inconsistency.*

78. The Section 32 discussion on page 4.12.2-9 and 10, Pre- and Post-Mine Land Use Discussions, has been revised with Revision 30 but the revised language is not highlighted to indicate that it being revised. Please highlight the revised language. In addition, the last sentence of this Section 32 narrative states that two ponds will be retained as permanent structures but only one is shown on the Post-Mining Land Use Map, Plate 4.12-1. Please correct this discrepancy. (GAW)

*The text in 4.12.2-9 was revised to illustrate one developed water resource being reclaimed.*

#### **Appendix 4.12-1 – Land Owner Preference Statements**

79. Please explain why there is an unsigned preference statement from Arlene Skager for the lands in Section 32 since she is not a surface owner. Please remove it if appropriate. (SAS)

*The Arlene Skager preference statement has been removed.*

80. Please explain why there are landowner preference statements from Jardene Moss, Karla Walter, Nathan Skager, Howard Skager, Phyllis Vandenburg, and Claudine Pickett for the SE¼ of Section 29 and the W½NE¼ of Section 32 since they are not listed as surface owners. Please remove them if appropriate. (SAS)

*These were removed.*

#### **Section 4.13 – Fish and Wildlife Resource Protection and Enhancement Plan & Fish and Wildlife Monitoring Plan**

81. The new narrative on page 2 of Section 4.13 states that the pre-mine stock pond (NW¼ of Section 32) will not be replaced because of the landowner request to return the land to cropland (see item no. 70); however, this statement is not correct based on some of the landowner preference statements. Several surface owners requested a return to pre-mine condition, and the one that requested more cropland does not specifically state that the DWR should not be replaced. NDAC 69-05.2-16-17 requires DWR replacement. (GAW)

*As discussed in item 70, this area is owned by multiple surface owners with varying percent ownerships, where the majority surface owners want cropland returned to all possible acres, which cropland does not require water. The text however was revised to list other alternatives to water such as rural water which we have pre-bought multiple sites, or if the existing well located in the northwest portion of the tract is disturbed the well would be replaced which would provide water for the cropland tract.*

82. BNI is proposing to reclaim 153.2 acres of pre-mine native grassland being added with Revision 30 as cropland. Given that native grassland has a higher wildlife value than cropland, please update the Fish and Wildlife Enhancement Plan with enhancement measures to offset the loss of this habitat as required by NDAC 69-05.2-09-17(1)(d). (GAW)

*The text in 4.13-2 was revised. BNI is reclaiming approximately 150 acres of native grassland to cropland at the surface owner's request. It was also revised in 4.13-2 that these pre-mine native grassland acres are degraded acres and consist of over 90% invasive species. The reclamation of cropland would provide food and higher amount of cover than the existing pre-mine condition adding more benefit than degraded grassland. Additionally, the shelterbelts are in extremely poor condition and the reclamation of those will add tremendous wildlife benefit through a rejuvenated vigor and diversity.*

83. Please list the correct plate title for Plate 4.13-1, Wildlife Monitoring Map, in the title box and list the revision date. To improve legibility, please also change line and text color to something other than yellow. (WTG)

*Revised map title from Wildlife monitoring map minewide to Wildlife monitoring map as well as added revision 30 to the title block. The yellow lines were changed to green.*

**Section 4.14 – Reclamation Costs for Bonding Purposes**

84. Please remove any reference to Revision 32 in the footnotes in this section because the worst-case reclamation cost estimate was not changed with Revision 32. (WTG)

*This clerical error has been revised.*

85. Please update Appendix 4.14-1, Worst Case Bond Estimate, in Microsoft Excel format that reflects the July 22, 2010, annual updates of the variable costs for Policy Memorandum No. 16. (MSK)

*Appendix 4.14-1 spreadsheet has been updated to reflect changes to the policy.*

86. Please make the following corrections to Plate 4.14-1, Worst Case Bond Calculation: all buildings, stripped drainageways, and diversions should be depicted; the stockpile around DWR 25-9 has been respread and can be removed from the map; and, as mining progresses north in the east-west pit, the clean water pond in Section 32, currently Pond 32-3, should be shown in its approximate location. (MSK)

*Plate 4.14-1 reflects all the mentioned corrections.*

**Other**

87. Several commonly used maps such as the Pre-Mine Land Use Map (the Soils Map is another example) consist of several maps that comprise the entire permit area. We strongly encourage BNI to consolidate these maps into a single map of the entire permit area. Having the permit in an electronic format negates the need for splitting the permit area into several maps to adequately depict the area.

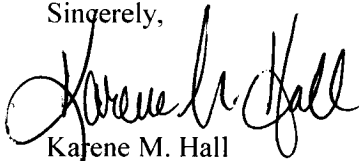
*As this request has been discussed with PSC staff on multiple occasions, it is not possible due to dated materials, digitizing, and geo-referencing older data/maps to create one cumulative map that adequately and accurately depicts certain material on certain maps, hence we have separate maps usually depicting map based on times the data was collected. The comment regarding "having the permit in an electronic format negates the need for splitting the permit area into several maps to adequately depict the area" does not address the issue in hand, which is whether it is a paper or electronic permit the data integrity is lost in consolidating them.*

88. Please address the items raised by the U.S. Fish and Wildlife Service in their August 20, 2010, letter (see enclosed copy).

*All comments raised are addressed within the permit itself.*

If you have any questions regarding this submittal, please contact me at the Center office.

Sincerely,



Kajene M. Hall  
Permit Coordinator